DOCUMENT RESUME

ED 375 027 SO 024 111

AUTHOR	Kuehl, John W.
TITLE	Mister Chief Justice. A Study Guide.
INSTITUTION	John Marshall Foundation, Richmond, VA.
SPONS AGENCY	Virginia Foundation for the Humanities and Public Policy, Charlottesville.
PUB DATE	92
NOTE	33p.
AVAILABLE FROM	John Marshall Foundation, 701 East Franklin Street, Suite 1515, Richmond, VA 23219 (film and study guide).
PUB TYPE	Guides - Classroom Use - Teaching Guides (For Teacher) (052) -- Audiovisual/Non-Print Materials (100)
EDRS PRICE	MF01/PC02 Plus Postage.
DESCRIPTORS	*Citizenship Education; Constitutional History; Constitutional Law; Instructional Materials; *Law Related Education; Secondary Education; Social Studies; *United States History
IDENTIFIERS	Justices; *Marshall (John); *Supreme Court

ABSTRACT

Intended to accompany the film "Mister Chief Justice," this study guide introduces the life of John Marshall and early U.S. history through a fictional account of a dinner party at the home of the chief justice in March, 1801. The guide presents the historical characters who attended the dinner, including John Marshall, Mary Willis Marshall, Eliza Ambler Carrington, Edward Carrington, Robin Spurlock, George Hay, Daniel Trigg, and Aaron Burr, as well as the historical events that preceded the dinner, the Whiskey Rebellion and the XYZ Affair. This guide provides primary documents and discussion questions related to the themes discussed at the dinner party, which covered the national identity, popular participation in government, and the costs of public service. The documents consist of the correspondence of John Marshall to other political leaders. A list of 18 selected works offers suggestions for other primary documents on the life of John Marshall and the politics of his day. (JD)

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MISTER CHIEF JUSTICE

A Study Guide

by John W. Kuehl

Consultant - S. Rex Morrow

Richmond, Virginia

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Printed in the United States of America

FOREWORD

Mister Chief Justice depicts one evening in the life of John Marshall. The time is March, 1801. Only the month before, Marshall had been appointed Chief Justice of the United States by the outgoing President, John Adams. After Marshall administered the oath of office to President Thomas Jefferson on March 4, he returned to his home in Richmond, Virginia, and to his beloved wife "Polly."

During his life, whenever John Marshall was home, once a month, he held what he called his "lawyers' dinners." These were parties for Marshall's friends, who included not only lawyers, but judges, legislators, journalists, and others. He often had thirty or more guests at these dinners. The dinners provided opportunities to share the news of the day, to discuss and even debate the issues facing the young American nation.

Mister Chief Justice is set during Marshall's first "lawyers' dinner" following his appointment as Chief Justice and the inauguration of Thomas Jefferson as President. The evening is a celebration for John Marshall and a time of deep concern for the national government.

Marshall and many of his friends were "Federalists" who believed in a strong Federal government. Federalists like George Washington and John Adams had led the United States since its creation. Thomas Jefferson, who believed in more popular democratic control and a weaker Federal government, was a "Republican," not the same as today's Republican Party.

History does not record that this particular dinner took place. But certainly America's future under the Republicans was on the minds of Marshall and his Federalist friends. Much of what John Marshall says in the film is drawn directly from his own writings. Thomas Jefferson of course is not present. But a friend and supporter of Jefferson, George Hay, was a frequent guest of John Marshall. Much of what Hay says in the film is derived from the writings of Thomas Jefferson.

Marshall served as Chief Justice of the United States until after Jefferson's death -- longer than any other Chief Justice. The qualities you see in the film -- persuasiveness, good humor, conviction, a gift for friendship -- helped Marshall make the Supreme Court a co-equal branch of the Federal Government -- equal to the Congress and the Presidency and the final arbiter of the meaning of the Constitution.

The John Marshall Foundation

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I

PEOPLE, PARTIES AND EVENTS IN *MISTER CHIEF JUSTICE*

JOHN MARSHALL was born on September 24, 1755 at Germantown in Fauquier County. During the Revolutionary War, he fought at Monmouth, Brandywine, Germantown and Great Bridge and served with George Washington at Valley Forge. In 1782, he was elected to the Virginia House of Delegates where he represented Fauquier County until 1787 when he became the delegate for Henrico County. On January 3, 1783, he married Mary Willis, the daughter of Jacquelin and Rebecca L. (Burwell) Ambler. He served in the Virginia state ratifying convention in June, 1788. In 1797, President John Adams appointed him commissioner to France. After the XYZ Affair, he became a national hero. Both Houses of Congress feted him with a banquet as did the citizens of Richmond and other cities. He was elected to the House of Representatives in 1799. In 1800, he was appointed Secretary of State, and in February, 1801, he became the Chief Justice of the United States Supreme Court. He served in that capacity until his death on July 6, 1835.

MARY WILLIS "POLLY" MARSHALL, wife of John Marshall, was born March 18, 1766. She was the daughter of Jacquelin Ambler, a wealthy merchant of Yorktown before the American Revolution. The war ruined him financially. Polly and her sister Eliza were reported to be very charming and beautiful. Jacquelin's wife Rebecca Burwell Ambler had, according to tradition, rejected Thomas Jefferson who as a youth in 1763 apparently loved Rebecca very much. Mary met her future husband at a ball in late 1779 or early 1780. She was 14 at the time and apparently fell in love with Marshall at first sight. He fell head over heels in love with her as well. In the notebook which survives from the one course he took at the College of William and Mary, one finds her name written in Marshall's handwriting in at least 10 ways. Eliza wrote that Mary had told her sister that she was "resolved to set her cap at" Marshall. Mary and John's romance blossomed in the spring of 1780, and they had a lifelong devotion to one another

according to the records which have been left. From letters written by her sister, it appears that Mary became an invalid soon after their marriage. Eliza referred to her sister's "extreme nervous affliction which more or less has embittered her comfort thro' life." Apparently Polly's reclusivness at the time of the film was the result of depression in part because of the absence of Marshall and the death of her father early in 1798. She had always been somewhat shy, and her bouts with melancholia and nervousness made her seem reclusive to outsiders. Polly and John had ten children only six of whom survived to adulthood. They were Thomas (born July 21, 1784), Jacquelin Ambler (born December 3, 1787), Mary (born September 17, 1795), John (born January 15, 1798), James Keith (born February 13, 1800) and Edward Carrington (born January 13, 1805). Polly died on December 25, 1831.

ELIZA AMBLER CARRINGTON was born in 1765. The eldest of four Ambler girls, Eliza seems to have been more assertive than her younger sister Polly. Her second husband was Edward Carrington. Eliza kept a letter book and had a substantial correspondence during her life. Most of what is known about the meeting and courtship of John and Polly comes from the writings of Eliza. She describes the ball in 1779 at which the two fell in love. Eliza died in 1847.

EDWARD CARRINGTON was born February 11, 1749. Like John Marshall, Carrington served in the American Revolution. Owner of plantations in Cumberland and Powhatan Counties, Carrington married Eliza Ambler, the sister of Marshall's wife Polly. He was a member of the Continental Congress in 1785-86.

George Washington appointed him Marshal of the United States District Court of Virginia in 1789. During the 1790s, Carrington was an important Virginia Federalist and corresponded regularly with the national leadership in Philadelphia. He served as the foreman of the jury which heard the Aaron Burr conspiracy case in 1807. Carrington died in Richmond on October 28, 1810.

ROBIN SPURLOCK, a slave, was according to family tradition a wedding gift from Marshall's father. Known for his impeccable attire,which contrasted with his master's somewhat careless dress,

Robin served the Marshall household for more than fifty years. "What the Chief Justice lacked in style," a former Richmonder wrote in 1879, "was fully made up by his head servant, old Robin Spurlock, who dressed after the same fashion as his master, but in a much more elegant manner. Robin regarded his master as the greatest man in the world, and himself as the next." In his will Marshall declared his "wish to emancipate my faithful servant Robin" and so directed this to be done conformably to Virginia law--which required freed slaves to leave the state or obtain permission to stay. If Robin chose to go to Liberia, Marshall gave him one hundred dollars. However, if liberating the old servant consistently with law and his own wishes was "impracticable," then Robin could choose his master from among Marshall's children and should be "always treated as a faithful and meritorious servant."

GEORGE HAY was born December 15, 1765. A prominent Virginia attorney, Hay was as the film suggests a strong Republican and supporter of Thomas Jefferson, who appointed him United States Attorney for the District of Virginia. He prosecuted Aaron Burr and criticized Marshall for favoring the defense in his handling of the case. He later became a judge of the United States District Court for Eastern Virginia. Hay defended freedom of the press and in 1799 wrote newspaper editorials attacking the Federalist Sedition Law which prohibited criticism of the government. Hay married the elder daughter of President James Monroe and lived at the President's house in Washington during his father-in-law's term.

DANIEL TRIGG, MR. HOBSON, & THE JUDGE are fictional characters created by the writer of *Mister Chief Justice* to advance the dialogue. They are composites of guests that might have attended John Marshall's famous "lawyers' dinners."

AARON BURR (1756-1836) was a prominent Republican who successfully organized the party in New York City during the 1790s. He became Vice-President in Jefferson's first term after the controversial election of 1800 in which he and Jefferson both received the same number of votes in the Electoral College. Burr did not step aside but flirted with the Federalists in the House of

Representatives which ultimately chose Jefferson. After he shot and killed Alexander Hamilton in a duel, Burr became a man without much political influence in either party. He hatched a scheme to set up his own kingdom in the West. In 1807, he was tried for treason in Richmond. John Marshall presided over the trial. Hay was the leading prosecutor; Carrington served as foreman of the jury. Burr was found not guilty and lived in Europe until 1812 when he returned to New York.

FEDERALISTS — The party of Alexander Hamilton, George Washington, John Adams and John Marshall. Federalists generally believed in a strong central government which could make America respected abroad and could also guarantee order and stability at home. They thought that leaders should be chosen by the people, but that they should then act independently without undue pressure from the public. When policies which they adopted proved unpopular, they tended to assume the stance of what one historian has called "the heroic gesture" — willing to sacrifice themselves for the good of the society even if the people did not appreciate their efforts. American interests, they believed, would be better served by an alliance with Great Britain, especially after they witnessed the excesses of mob violence in the French Revolution. In the election of 1800, they lost control of the Presidency and Congress.

REPUBLICANS — The party of Thomas Jefferson and James Madison. Their vision of America tended to be that of an agrarian society. They saw France as a sister republic with whom America should work. Generally they were more comfortable with the growing democratic tendencies emerging in the Early National period. Direct popular participation in issues of the day was more acceptable to them as a group. Although they suffered popular disfavor in the aftermath of the XYZ Affair because they were too closely associated with the French, generally the Republicans had greater success in winning popular approval. After 1800, they were the dominant political party in the national government.

WHISKEY REBELLION — A popular uprising in 1794 by farmers in Western Pennsylvania who were opposed to the Federalist excise taxes on items in everyday use, particularly whiskey

and the stills which produced whiskey. The "rebels" marched on Pittsburgh. President Washington and his administration raised a large army to crush the rebellion. The insurgency evaporated, but the troops did arrest some of the "ringleaders" who were hauled back to Philadelphia for trial. Many Westerners believed that the Federalist reaction to the "rebellion" was excessive, and the Party lost forever the support of the western counties of Pennsylvania.

XYZ AFFAIR — In 1797, John Marshall, Elbridge Gerry and Charles Cotesworth Pinckney were sent to Paris to try to resolve maritime difficulties between the two republics. The French had severed diplomatic relations with the United States following the Jay Treaty of 1794. French ships were seizing American merchant vessels in the Caribbean and in Europe. When the American envoys reached Paris, they were not received by the French government. Instead, Talleyrand, the foreign minister for the Directory sent three agents to demand a bribe ($250,000 in cash and the purchase of $12,500,000 in Dutch currency) to open negotiations. The agents threatened that France had a party in the United States that would overthrow the government if the demands were not met. When the dispatches from the American envoys were published in the United States, a wave of nationalism swept across the country. In town meeting resolutions, Americans insisted that they were not a disunited tool of the French. An undeclared war ensued in which the American navy had considerable success. Peace came in 1800.

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MISTER CHIEF JUSTICE

A Study Guide

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Written by John W. Kuehl

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II

JOHN MARSHALL: *NATIONALIST*

John Marshall lived during a period of revolutionary changes in attitudes about how the American society should be structured. During his life, he witnessed the transformation of America from the deferential class society into which he was born in 1755 to the far more democratic society associated with the era of Andrew Jackson in the 1830s. Americans during this Early National period were searching for their identity as a nation and were concerned about issues of liberty and authority in a republican society. There was general agreement that a republican form of government provided the best means of assuring liberty. John Marshall's experience in the American Revolution made him a nationalist. In the film, he says, "I went into the war a Virginian; I came out of that war an American." A champion of the Constitution written in 1787, John Marshall believed in a republican government in which the people were represented but did not make policy decisions nor did they dictate their opinions to public officials. Marshall advocated a government which was strong enough not to allow rule by the fickle mob. His experiences during the turbulent 1790s convinced him that the Jeffersonians were too willing to curry the favor of the masses even if that meant a total disregard for order and stability. "Mob pleasing demagogues," as Marshall calls them in the film, could never provide the leadership necessary to preserve a strong government or a stable society.

"Who [Marshall asks] can protect the people from their elected representatives? Who protects them from themselves?"

Well before he became "Mister Chief Justice", Marshall contributed substantially to the debate about the kind of society America should become. As a politician, Marshall supported a strong executive branch. During the early 1790s, he joined with fellow citizens of Richmond, Virginia, to criticize the efforts of the French Minister, Edmond Charles Genet, to stir up the people against the government, and he warned of the dangers to the callow

Republic of "dismemberment and partition." Marshall and the other Federalists would come to rue the day that they had sought popular support for policy initiatives, especially after the Jay Treaty when the populace turned on them. Nonetheless, Marshall's fervent commitment to an independent national leadership and a strong central government as the only vehicle for maintaining unity and American survival in the international community defined the nationalism which he would espouse through the remainder of his life. Later as commissioner to France during the XYZ Affair, Marshall was told by secret agents of "that dreadful, disgusting Talleyrand" (as Polly calls him in the film) and the French government that France had a party in the United States that would overthrow the government if the United States did not pay a substantial bribe to the French. When Marshall and Charles Cotesworth Pinckney left France, a quasi-war between the two republics broke out. Marshall returned to New York in the summer of 1798 as a national hero for his role in standing up to the insults of the French. (One clergyman likened Marshall to an Old Testament priest who had refused to negotiate with foes and saved God's chosen people by unifying them against their enemies.) His experiences as an envoy to France confirmed Marshall's conviction that a strong central government run by an enlightened elite could alone maintain the independence and viability of the fledgling American nation.

In his rulings as Chief Justice, Marshall established the sanctity of contract and enhanced the power of the national government and the Supreme Court. He stimulated entrepreneurial confidence by guaranteeing that businessmen who entered into contracts would not have them breached by the powers of an arbitrary government, and he established the power of the Supreme Court to interpret the Constitution through review of legislative acts. Moreover, the President, said Marshall, must obey the laws as the Supreme Court interpreted them.

Like his arch-rival Thomas Jefferson and other revolutionaries, John Marshall set in motion forces in the society which he could neither control nor totally understand. In many ways his Court decisions helped pave the way for a society of selfish interests that the Founding Fathers would have abhorred and that

was at odds with a society in which leaders sacrificed themselves for the good of the whole community. Yet Marshall sought, as he told Polly, to live up to his rationale for taking the job as Chief Justice of the United States Supreme Court. "If the people cannot turn to the Supreme Court for protection from what is popular, from what gets the most votes, where may they turn?"

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PRIMARY SOURCES

John Marshall to Charles Lee, November 3, 1797

My dear Sir

*When I closd my last letter I did not expect again to address you from this place. I calculated on being by this time on my return to the United States. The decision concerning us has not however been so rapid as I had supposd & my own opinion is that France wished to retain america in her present situation until her negotiation with Britain which it is beleived is about to recommence shall have been terminated & a present absolute rupture with america might encourage England to continue the war and peace with England & pending her differences with us will put us more absolutely in her power. A continuance of this state of things ought not to be permitted, but our situation is more intricate and difficult than you can believe. Since my last the demand for money has been yet again repeated. The last address to us which was extremely interesting concluded with uttering this remarkable sentiment, that if we beleivd that America would be united, by an representation we could make of the hostile temper of france, we should be mistaken. That we ought to know the diplomatic skill of france and her means in our country, sufficiently to be convinced that the French party in America would throw all the blame of rupture on the federalists as we stiled ourselves on [or] the british party as they style us. We were warned too of the fate of Venice....*p. 273.

Marshall's Account of a part of the negotiation with the French, November 8, 1797. Description of conversation with French agent Hottinguer

We told him, that it would be in vain for us to deny her [France's] power, or the solicitude we felt to avoid a contest with it; that no nation estimated her power more highly than America, or wished more to be on amicable terms with her; but that one object was still dearer to us than the friendship of France, which was our national independence: that America had taken a neutral station: she had a right to take it: no nation had a right to force us out of it: that to lend a sum of money to a belligerent power abounding in everything requisite for war but money, was to relinquish our neutrality, and take part in the war: to lend this money under the lash and coercion of France, was to relinquish the government of ourselves, and to submit to a foreign government imposed upon us by force: that we would make at least one manly struggle before we thus surrendered our national independence: that our case was different from that of one of the minor nations of Europe; they were unable to maintain their independence, and did not expect to do so: America was a great, and so far as concerned her self defence, a powerful nation: She was able to maintain her independence; and must deserve to lose it, if she permitted it to be wrested from her; that France and Britain had been at war for near fifty years of the last hundred; and might probably be at war for fifty years of the century to come: that America had no motives which could induce her to involve herself in those wars; and that if she now preserved her neutrality and her independence, it was most probable that she would not in future be afraid, as she had been for four years past: but if she now surrendered her rights of self government to France, or permitted them to be torn from her, she could not expect to recover them, or to remain neutral in any future war. p. 279.

John Marshall to Rufus King, December 24, 1797

They [the French] think we dare not leave them without being ordered away because as they say themselves such a step would produce a rupture and we know [that] they can count on a very strong party in America to support

them in such an event. I think them mistaken, but they are of a different opinion. p. 315.

On August 11, 200 of citizens of Richmond and its vicinity held a banquet for the returning hero, John Marshall. They drafted a lengthy tribute to him. Part of his response follows:

August 11, 1798

I rejoice that I was not mistaken in the opinion I had formed of my countrymen. I rejoice to find, though they know how to estimate, and therefore seek to avoid the horrors and the dangers of war, yet they know also how to value the blessings of liberty and national independence: They know that peace would be purchased at too high a price by bending beneath a foreign yoke, and that peace so purchased could be but of short duration. The nation thus submitting, would be soon involved in the quarrels of its master, and would be compelled to exhaust its blood and its treasure, not for its own liberty, its own independence, or its own rights, but for the aggrandizement of its oppressor. The modern world unhappily exhibits but too plain a demonstration of this proposition. I pray Heaven that America may never contribute to its still further elucidation.

Terrible to her neighbors on the continent of Europe, as all must admit France to be, I believe that the United States, if indeed united, if awake to the impending danger, if capable of employing their whole, their undivided force— are so situated as to be able to preserve their independence. An immense ocean placed by a gracious providence, which seems to watch over this rising empire, between us and the European world, opposes of itself such an obstacle to invading ambition, must so diminish the force which can be brought to bear upon us, that our resources, if duly exerted, must be adequate to our protection, and we shall remain free, if we do not deserve to be slaves. You do me justice, gentlemen, when you suppose that consolation must be derived from a comparison of the administration of the American government, with that which I have lately witnessed. To a citizen of the United States, so familiarly habituated to the actual possession of liberty, that he almost considers it as the

inseparable companion of man, a view of the despotism, which, borrowing the garb and usurping the name of freedom, tyrannizes over so large and so fair a portion of the earth, must teach the value which he ought to place on the solid safety and real security he enjoys at home. In support of these, all temporary difficulties, however great, ought to be encountered and I agree with you, that the loss of them would poison and embitter every other joy; and that deprived of them, men who aspire to the exalted character of free men, would turn with loathing and disgust from every other comfort in life. p.483.

John Marshall, *The Papers of John Marshall*, Vol. III, ed. by Charles T. Cullen (Chapel Hill, 1979).

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DISCUSSION QUESTIONS

1. In what post was Marshall serving at the time of this correspondence?
2. What consequences did the French threaten if the bribes were not paid?
3. Why couldn't the Americans pay the bribe demanded by the French?
4. What did Marshall believe about the French insistence that they had a strong party in the United States?
5. From these documents and the film, how would you define the nationalism espoused by John Marshall? What fears did he have about the ability of the United States to maintain its independence in a world of powerful potential enemies?
6. How does Marshall's nationalism relate to his decision to accept the post as Chief Justice in the film?

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III

MARSHALL AND JEFFERSON:
THE ROLE OF LEADERSHIP AND POPULAR PARTICIPATION IN A REPUBLICAN GOVERNMENT

The film points out that the hostility between John Marshall and Thomas Jefferson may indeed have sprung from personal animosities because of family problems. John Marshall had extensive experience as a soldier in the American Revolution. His defense of the Richmond from which Jefferson fled as governor probably added to their dislike especially when Jefferson was accused of cowardice.

The intense partisan battles of the 1790s added to the hostility of the two statesmen. Ideologically, Marshall and Jefferson were much at odds. As the film points out, Marshall saw Jefferson as a person who was eager to appeal to the masses in order to gain power for himself. He believed as he wrote to Alexander Hamilton that as President, Jefferson would undermine the balance of power between the executive and legislative branches of government by insinuating himself into the Congress where he would make his will supreme. Jefferson, for his part, believed that Marshall was an advocate of the "Monarchical" party which sought to impose an elitist government and thereby destroy individual liberties. Marshall's career as a national figure certainly exacerbated the hostility between the two leaders, when Marshall returned from France as a national hero after the XYZ Affair.

Jefferson made two perfunctory calls upon him in one morning. Marshall was not at home. Jefferson wrote a note after the second visit, stating that he was "lucky" not to find Marshall at home. Although he inserted an "un" in front of the lucky, it was clear that Jefferson was just as glad not to see his fellow Virginian. For his part, Jefferson seems to have blamed Marshall for arousing the popular nationalism and the attendant scorn heaped upon Jefferson's Republican party in 1798. Jefferson wrote that Marshall had "cooked up" the "XYZ dish." When Congress authorized the

printing and distribution of 10,000 of the dispatches revealing the French demand for a bribe and the suggestion that they had a party to overthrow the United States government, and when Congress enacted the Alien and Sedition Acts, Jefferson saw the government as under the "reign of witches."

The important Presidential election of 1800 discussed at some length in the film pitted Thomas Jefferson against Aaron Burr, John Adams and Charles Cotesworth Pinckney. Jefferson and Burr garnered the same number of votes in the Electoral College. Consequently the selection of the third President was thrown into the House of Representatives. There was much speculation about whether the Congress would be able to select a President before Adams' administration expired. Rumors were rife. Among them was that the Federalists were conspiring to have Secretary of State John Marshall named as President because the House could not decide between Jefferson and Burr. Such rumors did nothing to heal old wounds between Jefferson and Marshall.

During Jefferson's Presidency, Marshall infuriated Jefferson in the *Marbury v. Madison* case when he said that the President must obey the law as the Supreme Court interpreted it. Marshall scolded Jefferson for failing to issue a commission to an Adams appointee. As President, Jefferson sought to make the federal courts more responsive to the popular will. The Jeffersonians in Congress impeached Associate Supreme Court Justice Samuel Chase. Had the President's men succeeded in convicting and removing Chase, they would have charged and tried Marshall.

During the Burr treason trial in 1807, Marshall and Jefferson were again very much at odds. Marshall, who presided over the trial in Richmond, issued a subpoena ordering President Jefferson to appear and testify. Jefferson refused officially to respond to Marshall's order, but he did supply the written material requested by the court. Privately Jefferson was furious at the notion that the Court and Marshall assumed that they had the power to order the executive to appear anywhere at any time. When Marshall seemed to favor the defense during the trial, Jefferson's friend, George Hay, who was the leading prosecutor and the guest at Marshall's table in the film, angrily accused Marshall of stacking the deck for

the defense. The foreman of the jury which acquitted Burr was Edward Carrington.

As the years passed, Jefferson became more convinced that Marshall dominated the court and manipulated associate justices. He sought to have the court reform the way in which it handed down its judgments. Jefferson wanted each justice to publish a separate opinion on each case rather than have one opinion (very often that of Marshall) serve for the majority of the court.

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PRIMARY SOURCES

John Marshall to Charles Cotesworth Pinckney, March 4, 1801

> *I wish however more than I hope that the public prosperity & happiness may sustain no diminution under democratic guidance. The democrats are divided into speculative theorists & absolute terrorists: With the latter I am not disposd to class Mr. Jefferson. If he arranges himself with them it is not difficult to foresee that much calamity is in store for our country — if he does not they will soon become his enemies & calumniators.... His inaugural speech ... is in the general well judgd & conciliatory. It is in direct terms giving the lie to the violent party declamation which has elected him; but it is strongly characteristic of the general cast of his political theory.* p.89.

John Marshall to Alexander Hamilton, January 1, 1801

> *To Mr. Jefferson whose political character is better known than that of Mr. Burr, I have felt almost insuperable objections. His foreign prejudices seem to me totally to unfit him for the chief magistracy of a nation which cannot indulge those prejudices without sustaining deep & permanent injury. In addition to this solid & immoveable objection Mr. Jefferson appears to me to be a man who will embody himself with the house of representatives. By weakening the office of President he will increase his personal power. He will diminish his responsability, sap the fundamental principles of the government & become the leader of that party which is about to constitute the*

majority of the legislature. The Morals of the Author of the letter to Mazzei cannot be pure. p.46

[Marshall refers here to a famous letter written April 19, 1796, in which Jefferson not only condemned the Federalists for their "monarchical" and "aristocratic" views, but also attacked President Washington. Federalists frequently cited the letter as proof of Jefferson's duplicity.]

John Marshall, *The Papers of John Marshall,* Vol VI, ed. by Charles F. Hobson (Chapel Hill, 1990).

The ideological/political disagreement between Marshall and Jefferson raises important questions about the role of the people in a republic and about the function of a leader.

DISCUSSION QUESTIONS

1. John Marshall wore proudly the label of Federalist. Describe the characteristics or political beliefs associated with the Federalist Party.

2. How did Marshall's political views differ from those of President Thomas Jefferson? In what did the early Republicans believe?

3. What role did John Marshall suggest or describe for the U.S. Supreme Court under his leadership? What concerned him about the Supreme Court before he became Chief Justice?

4. Describe the positions of Marshall and the dinner guests about popular participation in the affairs of republican government.

5. What do the film and the documents tell us about Marshall's attitude regarding Jeffersonian views of government?

6. List and describe two events according to the film which led to the dislike that existed between John Marshall and Thomas Jefferson.

7. What events during the Presidential election of 1800 further alienated Jefferson and Marshall?

8. What is the substance of John Marshall's concern in his letter to Charles Cotesworth Pinckney?

9. To what is Marshall referring in his letter to Alexander Hamilton when he suggests that Jefferson expressed foreign prejudices?

10. How does Marshall believe that Jefferson would weaken the Presidency?

11. When John Marshall presided over the trial of Aaron Burr, how did Marshall anger Jefferson and further define the authority of the federal courts?

12. What characteristics should a leader in a republic possess?

13. Should a leader perfectly reflect popular opinion on every issue or should he/she risk the people's favor by acting independently?

IV

JOHN MARSHALL: *THE DOMESTIC COSTS OF UNSELFISH PUBLIC SERVICE*

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PRIMARY SOURCES

To Charles Lee, March 10, 1798

I have cursed a thousand times the moment when a sense of duty inducd me to undertake this painful embassy, but I must now make the best of it. p. 397.

John Marshall to Mary W. Marshall, November 27, 1797

My dearest Polly,

I have not since my departure from the United States receivd a single letter from you or from any one of my friends in America. Judge what anxiety I must feel concerning you. I do not permit myself for a moment to suspect that you are in any degree to blame for this. I am sure you have written often to me but unhappily for me your letters have not found me. I fear they will not. They have been thrown over board or intercepted. Such is the fate of the greater number of the letters addressed by Americans to their friends in France, such I fear will be the fate of all that may be addressed to me.

In my last letter I informd you that I counted on being at home in March. I then expected to have been able to leave this country by christmass at furthest & such is my impatience to see you & my dear children that I had determined to risk a winters passage: I now apprehend that it will not be in my power to reach America til April or May — but on this subject all is yet uncertain. I wish you woud present my compliments to.... I think nothing will prevent my being at the chancery term in May. Oh God how much time & how much happiness have I thrown away! Paris presents one incessant round of amusement & dissipation but very little I beleive even for its inhabitants of that society which interests the heart. Every day

you may see something new magnificent & beautiful, every night you may see a spectacle which astonishes & inchants the imagination. The most lively fancy aided by the strongest description cannot equal the reality of the opera. All that you can conceive & a great deal more than you can conceive in the line of amusement is to be found in this gay metropolis but I suspect it woud not be easy to find a friend. I woud not live in Paris to be among the wealthiest of its citizens. I have changed my lodgings much for the better. I lived till within a few days in a house where I kept my own apartments perfectly in the style of a miserable old batchelor without any mixture of female society. I now have rooms in the house of a very accomplishd a very sensible & I beleive a very amiable lady whose temper, very contrary to the general character of her country women, is domestic & who generally sets with us two or three hours in the afternoon. This renders my sitation less unpleasant than it has been but nothing can make it eligible. Let me see you once more & [then I] can venture to assert that no consideration will induce me ever again to consent to place the Atlantic between us. Adieu my dearest Polly. Preserve your health & be as happy as possible till the return of him who is ever yours. I inclose this letter under cover to Colo. Carrington. Whenever that happens you will advert to paying the postage. pp. 299-301.

To Mary W. Marshall, August 18, 1798

My dearest Polly,

I reached this place about a week past & have scarcely had time to look into any business yet there are so many persons calling every hour to see me. I have been a little indisposd by the hot & disagreeable ride but am now perfectly well & if I coud only learn that you were entirely restord I shoud be happy. Your mama & friends are in good health & your mama is as chearful as usual except when some particular conversation discomposes her. Your sweet little Mary is one of the most fascinating little creatures I ever beheld. She has improved very much since I saw her & I cannot help agreeing that she is a substitute for her lovely sister. She talks in a way not easily to be

understood tho she comprehends very well every thing that is said to her & is the most coquetish little prude & the most prudish little coquet I ever saw. I wish she was with you as I think she woud entertain you more than all the rest of your children put together. Poor little John is cuting teeth & of course is sick. He appeard to know me as soon as he saw me. He woud not come to me but he kept his eyes fixed on me as on a person he had some imperfect recollection of. I expect he has been taught to look at the picture & had some confusd idea of a likeness. He is small & weakly but by no means an ugly child. If as I hope we have the happiness to raise him I trust he will do as well as the rest. Poor little fellow, the present hot weather is hard on him cutting teeth, but great care is taken of him & I hope he will do well.

I hear nothing from you my dearest Polly but I will cherish the hope that you are getting better & will indulge myself with expecting the happiness of seeing you in october quite yourself. Remember my love to give me this pleasure you have only to take the cold bath, to use a great deal of exercise to sleep tranquilly & to stay in chearful company. I am sure you will do every thing which can contribute to give you back to yourself & me. This hot weather must be very distressing to you— it is so to every body— but it will soon be cooler. Let me know in time every thing relative to your coming down. Farewell my dearest Polly, I am your ever affectionate

J Marshall pp. 486-487

John Marshall, *The Papers of John Marshall*, Vol. III, ed. by Charles T. Cullen (Chapel Hill, 1979).

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DISCUSSION QUESTIONS

1. In Marshall's first letter to Polly, how does he describe Paris?
2. Why does he suspect that he is not receiving Polly's letters and those of his other American friends?
3. What characteristics of family seem most important to Marshall in the second letter?
4. What advice does he give her for maintaining her health?
5. In the film, Polly expresses her concern that John's life would never again be a private matter, should he accept the post as Chief Justice. What relevance does Polly's reservation have for American society today?
6. Marshall suggests that there should exist a balance between a civic leader's public life and his private life. Does such a balance exist today? How have modern technological advances challenged Marshall's belief that there can be a balance between the public and private lives of republican leaders?
7. Does a public figure in government have any moral or legal rights to privacy? If so, discuss them?
8. Does a lack of privacy for public servants affect the quality of leaders in our day?

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V

Review Questions

1. True or False. John Marshall was a member of the Federalist Party.

2. Which of the following characteristics is NOT representative of John Marshall? A) advocate of a strong federal government, B) supporter of the concept of a representative republic, C) defender of a stronger federal legislature, D) champion of the separation of powers in central government.

3. Which office did John Marshall NOT hold? A) American envoy to France, B) American Revolution military leader, C) Vice President of the United States, D) Chief Justice of the Supreme Court.

4. True or False. Mary W. Marshall, called Polly, suffered from severe nervousness or emotional distress during much of her adult life.

5. Over which of the following issues did John Marshall most disagree with Thomas Jefferson in the film? A) slavery, B) a bicameral federal legislature, C) America's relations with European powers, D) states' rights.

6. True of False. John Marshall inherited a powerful federal branch of government when he assumed the position of Chief Justice.

7. John Marshall was concerned about the role of the populace in participatory government. Which danger seemed most serious to him in the film? A) election fraud, B) partisan politics, C) foreign influence, D) mob rule.

8. In which state did the Whiskey Rebellion take place? A) New Jersey, B) Pennsylvania, C) Virginia, D) Rhode Island.

9. Which character was not present in the living room discussion in the Marshall home? A) Daniel Trigg, B) George Hay, C) Polly Marshall, D) Edward Carrington.

10. In the film, John Marshall comments on the difficulties faced by George Washington at Valley Forge during the American Revolution. What aspect of Washington's experience, according to Marshall, most demonstrated the need for a strong central government? A) unwillingness of state militia to cross from their home state to another, B) the lack of military academies, C) the failure of state militia, D) lack of ample provisions to supply the army.

11. Which President appointed John Marshall to the post of Chief Justice of the Supreme Court? A) John Adams, B) George Washington, C) Thomas Jefferson, D) James Madison.

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REVIEW QUESTIONS ANSWER KEY

1. True.
2. C, defender of a stronger federal legislature.
3. C, Vice President of the United States.
4. True.
5. C, America's relations with European powers.
6. False.
7. D, mob rule.
8. B, Pennsylvania.
9. C, Polly Marshall.
10. D, lack of ample provisions to supply the army.
11. A, President John Adams.

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VI

Recommendations for Further Reading

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Selected Works - Mature Readers

Beveridge, Albert. *The Life of John Marshall.* Four Volumes. New York: Houghton Mifflin, 1919.

Marshall, John. *The Papers of John Marshall.* Herbert A. Johnson, et. al., eds. Six Volumes to date. Chapel Hill: The University of North Carolina Press, 1974-

Mason, Francis Norton. *My Dearest Polly: Letters of Chief Justice John Marshall to His Wife, with their Background, Political and Domestic, 1779-1831.* Richmond: Garnett and Massie, Inc.,1961.

Miller, John C. *The Federalist Era, 1789-1801.* New York: Harper and Row, Inc., 1960.

Paxton, William M. *The Marshall Family.* Cincinnati: 1885, reprint, The John Marshall Foundation: 1988.

Peterson, Merrill. *Thomas Jefferson and the New Nation.* New York: Oxford University Press, 1970.

Risjord, Norman K. *Chesapeake Politics, 1781-1800.* New York: Columbia University Press, 1978.

Swindler, William F. *The Constitution and Chief Justice Marshall.* New York: Dodd, Mead, Inc., 1978.

Wood, Gordon S. *The Radicalism of the American Revolution.* New York, Alfred A. Knopf, Inc., 1991.

SELECTED WORKS - STUDENTS

Baker, Leonard. *John Marshall: a Life In Law*. New York: Macmillan, 1974.

Corwin, Samuel E. *John Marshall and the Constitution: a Chronicle of the Supreme Court*. New York: Brook Co., 1970.

Loth, David. *Chief Justice: John Marshall and the Growth of the Republic*. New York: Greenwood Press, 1970.

Monsell, Helen A. *John Marshall: Boy of Young America*. Indianapolis: Bobbs Co., 1962.

Newmyer, R. Kent. *The Supreme Court under Marshall and Taney*. Arlington Heights, Illinois: Harlan Davidson, 1968.

Severn, Bill. *John Marshall, the Man who Made the Supreme Court*. New York: D. McKay, Co., 1969.

Stites, Francis N. *John Marshall, Defender of the Court*. Boston: Little, Brown, and Co., 1981.

Tucker, Caroline. *John Marshall: the Great Chief Justice*. New York: Farrar and Straus, 1962.

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AUDIO-VISUAL RESOURCE

Equal Justice under the Law, Commission on the Bicentennial of the U.S. Constitution, Judicial Conference of the United States. Pittsburgh: WQED Broadcasting Service. 1988. [Provides six dramatizations based on *Marbury v. Madison*, *McCulloch v. Maryland*, *Gibbons v. Ogden*, and three tapes on the Aaron Burr trial.]

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Credits

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This *Guide* was developed with the support of the Virginia Foundation for the Humanities and Public Policy, but does not necessarily represent its views and opinions. VFHPP may be contacted at 145 Ednam Drive, Charlottesville, VA 22901; (804) 924-3296.

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The film *Mister Chief Justice* and this *Study Guide* were produced by The John Marshall Foundation. The Foundation is a joint undertaking of the Virginia Bar Association and the Association for the Preservation of Virginia Antiquities. It supports the John Marshall House in Richmond, Virginia, as a memorial to the Chief Justice, and sponsors related educational programs. The John Marshall Foundation may be contacted at 701 East Franklin Street, Suite 1515, Richmond, VA 23219.

THE John Marshall FOUNDATION

John Marshall served as Chief Justice of the United States for 34 years, longer than any other Chief Justice. Against formidable political odds and personal attacks, Marshall took a weak, ineffective Supreme Court and made it into the final arbiter of the Constitution. The principle of judicial review established by John Marshall may be the greatest legacy the United States has given to the free, constitutional democracies of the world. Yet John Marshall remains a little known and unsung hero of the American system of government.

John Marshall was an ordinary man with an extraordinary mind and ability to persuade even his political foes. He loved life, good times, and a good argument. Once a month, whenever Marshall was home in Richmond, Virginia, he would have what he called his "lawyers' dinners," though journalists, judges, and non-lawyers were welcome. ***Mister Chief Justice*** introduces us to John Marshall during one such dinner in March, 1801, only a few days after he administered the oath of office to President Thomas Jefferson, Marshall's cousin and a lifelong enemy. Marshall himself was only appointed Chief Justice a few days earlier, and this is his first visit home. It is an evening of both celebration and apprehension for the new American Republic.

Mister Chief Justice is a love story. It is a story of devotion to duty and to the survival of the young United States in spite of enormous political and personal sacrifice. Most of all, ***Mister Chief Justice*** is the story of Marshall's lifelong love affair with his wife, who he called, "My Dearest Polly."

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